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Emmanouil Domazakis

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EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1794

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/506,411	<b>Applicant(s)</b> DOMAZAKIS, EMMANOUIL	
	<b>Examiner</b> JYOTI CHAWLA	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 1/14/2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The Amendments filed January 14, 2008 have been entered. Claims 7 and 11 have been amended. Claims 7-12 remain pending and are examined in the application.

#### ***Information Disclosure Statement***

Applicant's remarks dated January 14, 2008 regarding the copies of foreign references have been noted, however, the information disclosure statement filed September 1, 2004 still fails to comply with 37 CFR 1.98(a) (2) as discussed in the previous office action. In order to expedite the prosecution the foreign references have been added in US Form 892 and included with the office action and the applicant does not have to send a supplementary IDS.

#### ***Specification***

Applicant's remarks regarding the unavailability of the specification as originally filed have been considered. The remarks, however, are not convincing and the objection is maintained for the reasons of record. The applicant is once again provided with the guidelines that illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

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- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

#### **Content of Specification**

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
  - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."

- (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

### ***Claim Objections***

Claims 11-12 are once again objected to because of the following informalities: The claims as recited includes the term “which is characterized by” in lines 1 and 2 of the claim. Applicant is suggested to change the phraseology to a more accepted US term, such as “wherein” to clarify the meaning of the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112(First paragraph)***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case, the amendment to claims 7 step c and claim 11, step b) reciting “Continuing mixing with simultaneous vacuum

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application for 3 minutes with the resulting product temperature not exceeding 4°C”, the applicant disclosure paragraph [0056] states “Mixing continues with the simultaneous vacuum application ...until the temperature of the mixture rises up to 4.degree.C.”

Thus the applicant's disclosure supports mixing and vacuum application until the mixture temperature rises up to 4<sup>0</sup>C, i.e., the mixing and vacuum treatment continues until the temperature of mixture is 4<sup>0</sup>C, however, the method as disclosed does not have support for the “resulting product temperature not exceeding 4°C”, (emphasis added) found in the claims 7 and 11 as recited, which is therefore, considered to be new matter.

***Claim Rejections - 35 USC § 112(second paragraph)***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Applicant's amendments to claims 7 and 11, and applicant's remarks about the 112 rejections have been considered but are not persuasive.

Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 (refer to step c) recites “with simultaneous vacuum application for 3 min with the resulting product temperature not exceeding 4°C”. However, the temperature of the material or the mixture before commencement of step c is not stated (the temperature of the meat and H<sub>2</sub>O is stated but temperature of other ingredients or overall temperature of the mix is not defined). Therefore, it may not be possible to simultaneously satisfy the limitations of “continuing mixing with simultaneous vacuum application for 3 min” (emphasis added) and that “with the resulting product temperature not exceeding 4°C”.

Claim 7 also recites “with total heat treatment time during pasteurization varying between 1 and 3 hours depending upon the diameter of the resulting product”, but does not define any specific relationship between the “diameter” and the “total heat treatment time”. Therefore, it is not possible for one of ordinary skill in the art to determine what this dependence is and thus, the claim as recited is unclear.

Claim 11 (refer to step b) also recites “with simultaneous vacuum application for 3 minutes with the resulting product temperature not exceeding 4°C”. However, the temperature of the product before commencement of step b is not stated. As claimed, the temperature of meat and H<sub>2</sub>O is stated but temperature of other ingredients or overall temperature of the mix is not defined. Therefore, as also explained for claim 7, it may not be possible to simultaneously satisfy the limitations of “continuing mixing with simultaneous vacuum application for 3 minutes” (emphasis added) and that time is also determined to satisfy “with the resulting product temperature not exceeding 4°C”.

Note: Applicant is also referred to the rejection of claims 7 and 11 under 112 (first paragraph) as discussed in the office action above.

Claims 8 and 9 are rejected for being indefinite for the recitation of percentage of olive oil and feta cheese respectively, wherein it is not clear whether the percentage is based on weight or volume of the finished product. The specification also does not provide details of the proportion of either of the above stated ingredients. Clarification and correction is required. In order to expedite the prosecution, and for the purposes of prior art comparison, any meat based food products with above ingredients in any proportion will be regarded as relevant prior art.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the



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prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Determining the scope and contents of the prior art.

Ascertaining the differences between the prior art and the claims at issue.

Resolving the level of ordinary skill in the pertinent art.

Considering objective evidence present in the application indicating obviousness or nonobviousness.

(A) Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (WO 02/065860) in view of Hans Drexel (DE 10065633 A1) German document and machine translation.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(b).

Domazakis teaches of a method for preparing meat-based products, which is characterized by the incorporation of olive oil instead of animal fat, and the addition of milk protein (cheese), comprising the following steps:

(a) Mixing fat-free meat at a temperature of 0 °C. with water at a temperature of -2°C to 2°C, salt, preservatives and auxiliary salts(Page3, lines 24-26);

(b) Adding olive oil (Page3, lines 28);

(c) Continuing mixing with simultaneous vacuum application for 3 minutes until the resulting product temperature rises up to 4°C (Page3, lines 29-31);

(d) Adding milk protein (i.e., cheese) and continuing vacuum mixing until the feta cheese is totally dispersed throughout the resulting product (Page3, lines 26-36);

(e) Conveying the resulting product to a filling machine, where it is stored, with a simultaneous vacuum application at 1000 mbar and then pasteurization at 71°C. with

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total heat treatment time during pasteurization depending upon the diameter of the resulting product and varying between 1 and 3 hours (Page 3, lines 31-36); and (f) Moving the resulting product into a freezer unit at a maximum temperature of 2<sup>0</sup>C (Page3, lines 35-36).

The reference teaches of the process of making the meat based product as instantly claimed. However the reference does not teach of feta cheese or cheese in the invention as taught by Domazakis. However addition of cheese to meat was known at the time of the invention (e.g., Bratwurst Links with cheddar). Sausages wherein soft and/ or fresh cheeses are added to the meat in order to make a low fat sausage product were also known at the time of the invention as taught by Hans Drexel, hereinafter, Drexel (Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method as taught by Domazakis and add cheese to the sausage product as taught by Drexel. One would have been motivated to add cheese to provide an additional protein source in the meat product and make a low fat meat sausage as taught by Drexel.

Drexel teaches of addition of fresh and soft cheese to the meat sausage product (Translation pages 1-2). Regarding feta cheese, it is noted that feta cheese was known at the time of the invention as a soft cheese. Therefore, to substitute any soft or fresh cheese for another in the sausage product taught by Drexel would have been a matter of routine determination to one of ordinary skill in the art at the time of the invention. It would have been also obvious to one of ordinary skill in the art at the time the invention was made to substitute one art recognized functional equivalent (i.e. soft /fresh cheese) for another (i.e. feta cheese) in the process of making the meat based sausage product as disclosed by Domazakis (modified by Drexel), depending on which cheese products were more available and affordable at the time the invention was made. One would have been further motivated to add different types of cheese including feta cheese, to the meat and olive oil composition taught by Domazakis in order to line of products that differ in flavors based on the source of cheese and meat used that can be made with the same equipment. One would have been further

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motivated to do so in order to provide a variety of taste and flavor to the intended consumer.

Further, applicant's attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. In *re Benjamin D. White*, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In *re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

Regarding claim 8 and 9, the reference teaches of addition of both milk protein (i.e., cheese) and olive oil. However the reference does not teach of the amounts in which each of the ingredients could be incorporated in the final meat, cheese and olive oil product. However, cheese is added to the meat based product to make the meat and oil emulsion more creamy and the relative amounts of each of the ingredients can be varied based on the optimal color, texture or flavor desired. Therefore one of ordinary skill in the art at the time of the invention would have been motivated to modify Domazakis in order to obtain products with varied relative amounts of meat, cheese and oil, based on the optimal flavor, color and texture desired. One would have been further motivated to do so in order to make more than one kind of product by using the same main ingredients, thus creating variety for the consumer.

Further, attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in fact situation of the instant case. At page 234, the Court stated as follows:

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This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected and useful function. In re Benjamin D. White, 17 C.C.P.A. (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

Regarding claim 10, Domazakis in view of Drexel teaches meat -based products characterized by the addition of olive oil and cheese and are prepared by the method as instantly claimed, as discussed regarding the rejection of claim 7.

Regarding claim 11, see the rejection of claim 7. Claim 11 differs from claim 7 by elimination of the step of addition of olive oil, however, since the method as instantly claimed is a method comprising the steps, thus the reference still teaches of the process as recited in claim 11. Thus, claim 11 is rejected for the same reasons as discussed regarding the rejection of claim 7 above.

Regarding claim 12, Domazakis in view of Drexel teaches meat -based products characterized by the addition of milk protein (i.e., cheese) and are prepared by the method as instantly claimed.

B) Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens et al (GB1108994) (IDS) in view of the combination of Christensen et al (US 5654028), Sonoma sausage and Farkye et al (US 5766657).

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Stevens teaches a method of making the alimentary composition where the natural edible material of animal or vegetable origin is used. The alimentary material (meat {chicken meat Page 2, Example 1} or vegetables or both) is in a finely divided state or is minced (Page 1, lines 60-80) as instantly claimed. The material is salted and olive oil is added to the mixture either before or after the alimentary material is cooked (page 1, lines 80-86). The composition is homogenized (mixer homogenizer, Page 2, line 63) after the addition of olive oil and sterilized (Page 2, lines 1-75)

Therefore the process of making mixed alimentary compositions where olive oil is added to lean meat and then the mixture is homogenized was known at the time of the invention as taught by Stevens et al.

Stevens however, is silent as to the temperatures of processing and the addition of cheese or milk based protein composition. Christensen teaches of a comminuted lean meat composition by the process where the comminuted meat is mixed with an emulsion of water and oil along with other ingredients as salt and other fat replacers. The ingredients are mixed and ground to reach the final largest particle diameter of 5mm. The high speed grinder is used for mixing. Addition of 1-15% of other ingredients is also taught. The resulting mixture is distributed to form suitable sized packaging (e.g., sausage shape) and preservation and /or cooking treatment either before or after packaging (Column 20, line 10 to Column 22, line 5). Regarding the processing temperatures, Christensen teaches of processing meat products at various temperatures and also teaches freezing at temperatures below 0°C as is instantly claimed (Examples 1-21, specifically Example 19, Column 50, lines 53-55). Christensen teaches of making sausages and other meat based products by the process outlined in columns 21-24 (Column 25, lines 1-11). Christensen also teaches of addition of ice water to the comminuted meat to make an emulsion, i.e., temperature in the range of 0°C (Column 30, Example 1, Lines 25-65). The reference further teaches of the addition of skimmed milk powder, (i.e., milk protein based compound), seasoning and salt. The ice water is added at two steps to keep the emulsion at a lower temperature. The reference also teaches of vacuum mixing (Column 26, lines 1-5) and

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then preservation or cooking treatment (Column 21, line 65 to Column 26, line 3). Christensen teaches of various preservation and cooking times and temperatures and provides examples of distributing the product in suitable sized packaging and casings and employ various methods of cooking and preservation (Column 23-Column 52). Specifically regarding the temperature of heat treatment in the recited range of the applicant, Christensen teaches of heating a sausage at 80<sup>0</sup>C for about 40 minutes (Column 30, lines 60-65). In another example of minced meat product as taught by Christensen, is filled in packages and heated for 70 minutes in order to preserve the packaged product (Column 33, lines 5-20). In yet another example, Christiansen teaches of heating at a temperature of 180<sup>0</sup>C for about 45 minutes (Column 36, lines 5-20) and also see example 10, where Christensen teaches of heating at about 80<sup>0</sup>C for about 75 minutes, which falls in applicant's recited range. Furthermore, it is noted that the thicker the product diameter, the longer time it would require at a given temperature to be heated or cooked. Also in the range of normal cooking/ preservation temperatures, it would have been obvious to one of ordinary skill in the art at the time of the invention that, the higher the temperature employed for cooking or preserving a food product, the lesser the time required to achieve the desired level of cooking or preservation etc. Thus, time and temperatures required for cooking and /or preservation of foods vary at least based on the form of food (chunks or comminuted), ingredients (vegetables or meats, uncooked or part-cooked or cooked), packages (sausage thickness, canned or packaged products etc) and the storage life desired. Further it is noted that the applicant has not specified a package shape or size or any other such characteristic for the purpose of comparison. Therefore, based on teachings from Christensen and the claim as recited, it would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention to heat the food product to a temperature and time suitable for cooking and /or preservation of the food depending on the thickness or diameter of the product, which is also the intent of the applicant. Therefore, the reference teaches of the process steps recited in the claims 7 and 11.

Thus the process of making meat based combination foods with olive oil and milk based product was known in the art at the time of the invention (Stevens and

Christiansen). The process steps as recited in claims 7 and 11 were also known in the art of meat based product making, as discussed above. Meat and cheese products were also known in the art at the time of the invention, e.g., cheddar Bratwurst. Therefore one of ordinary skill in the art at the time of the invention would have been motivated to modify the method taught by Stevens and include the low temperature processing steps as taught by Christiensen and choose any variety of cheese as the milk protein source to make the emulsion in order to make a variety of meat and cheese products.

Regarding addition of feta cheese or any other cheese in the invention as taught by Stevens, it is noted that addition of cheese to meat was known at the time of the invention (e.g., Bratwurst Links with cheddar). Sausages with cheese were known is further evidenced by list of sausages sold by Sonoma sausage, where chicken sausage with feta cheese was also known and sold at the time of the invention. Thus, sausage products with Feta cheese were also known in the art at the time of the invention.

Regarding the motivation to add feta cheese in the process as recited by Stevens in view of Christiansen, Farkye teaches of making melt control cheeses that can be cooked better without melting away. The reference also teaches of making controlled melt cheeses like feta cheese (Column 2, lines 35-40) so that the cheese product obtained does not melt away and drip from the combination foods during the normal cooking and heating process (Column 1, lines 20-30). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify Stevens and add cheese as the protein source in the meat product as taught by Sonoma sausage. One would have been further motivated to add different types of cheese to the meat and olive oil composition taught by modified Stevens in order to produce a line of products that differ in flavors based on the source of cheese and meat used that can be made with the same equipment. One would have been further motivated to add controlled melt cheeses, such as the ones taught by Farkye so that the cheese does not melt prematurely during the heating/cooking process. One would have been motivated to choose and controlled melt cheese, such as, feta cheese in order to make a novelty product where the cheese does not have an overpowering flavor of its

own (like sharp cheddar and Swiss cheeses). One would also have been motivated to add feta cheese for its characteristic whitish color, as it would provide a good contrast with the meat and the spices and provide a marbled look to the meat product thus giving it a pleasing visual quality.

Regarding claim 8, Stevens is silent as to the olive oil content of the meat product, however Christensen teaches that the fat content of the finished meat based product is less than 10% (Column 22, lines 1-5). Regarding the added edible oils Christensen teaches of using oils and specifically olive oil (Column 28, lines 15-16) where the amount of edible oil should be under 5% (Column 28, lines 1-22) which falls in the range recited by the applicant in claim 8. Therefore, it would have been obvious to modify Stevens and add olive oil in the range as taught by Christensen, in order to obtain a sausage product with adequate amount of vegetable oil. One would have been motivated to do so in order to make a moist and tender product while keeping the calorific content of the product low.

Regarding claim 9, Stevens is silent and Christensen teaches the addition of protein in the composition (Column 4, lines 53-55) and 1-15% of other ingredients (further ingredients) or meat extenders which can be cooked or uncooked vegetables, water binding agents, structuring agents, preservatives, flavoring agents, spices, meat extenders, flavor enhancing agents, sweetening agents, coloring agents, vitamins, smoke, and curing agents, whereby a meat product mixture results in which the proportion of additional ingredients is in the range of 1-15% by weight, preferably 2-12% by weight, in particular 4-10% by weight. (Column 23, line 65 to Column 24, line 30). The reference also teaches of preservative cultures of bacteria that produce lactic acid or acetic acid. Cheese or milk products act as meat extenders, structuring agents, flavoring agents, coloring agent based on the variety used and also help in preservation due to the bacterial cultures present in the cheese. Further, Sonoma Sausage reference teaches that sausage with feta cheese was known at the time of the invention. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to



further modify Stevens in view of Sonoma sausage and Farkye, as discussed regarding claims 7 and 11 above, and add desired cheese to the meat based composition. One would have been motivated to add cheese in order to add a product that is known for its good taste and nutritional value while extending the meat product. Low melt cheeses are known for their versatility for being added to combination foods, as taught by Farkye. Therefore, choice of any kind of cheese, especially , low melt cheese, i.e., feta, would have been a matter of choice for one of ordinary skill in the art at the time of the invention based on the final taste, flavor and texture of the meat product desired.

Regarding claims 10 and 12, Stevens in view of the combination of Christensen, Sonoma sausage and Farkye teach the meat based products that are made by the instantly claimed method. Thus the combination of references teaches of the products made by the method as recited in claims 10 and 12.

Thus meat products containing milk based protein and olive oil were known in the art at the time of the invention, where the proteins or other components and olive oil added to the meat product is in the range recited by the applicant. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Stevens and add milk protein based compound like cheese and olive oil in the range taught by Christensen at least in order to make lower fat meat based product, which is also the intent of the applicant.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

I) Claim 7-12 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6-12 of copending Application No.10/506,417. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the applications are claiming the same method steps in the method of making a meat, feta cheese and olive oil based minced food product that can be extruded to form sausages.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

II) Claims 7-12 rejected on the ground of nonstatutory double patenting over claims 1-2 of U. S. Patent No. 7026007 B2 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: The current application claims a method of making meat cheese and olive oil based food product and patent 7026007 B2 claims of the same method but in place of cheese the method claims milk protein component which includes cheese.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Response to Arguments***

Applicant's arguments dated 1/14/2008 with respect to claims 7-12 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's response regarding the IDS has been acknowledged and responded above.

Applicant's remarks regarding the 112 rejections have been considered and responded in the office action above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

Jyoti Chawla  
Examiner  
Art Unit 1794

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